

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

July 31, 2013 at 10:00 a.m.

1.	<u>13-26200-E-13</u>	NICOLE CHAMBERS	MOTION TO DISMISS CASE
	TSB-2	Stephen Murphy	6-28-13 [<u>40</u>]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

The Trustee argues that the Debtor did not commence making plan payments and is \$2,500.00 delinquent in plan payments, which represents one month of the plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

July 31, 2013 at 10:00 a.m.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

2.	<u>13-26601</u> -E-13	CASSANDRA HUAPAYA Richard Jare	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 6-18-13 [<u>22</u>]
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Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on June 13, 2013). The court docket reflects that on July 18, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

3. [13-91102](#)-E-7 DANIEL KREVITSKY

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-5-13 [[27](#)]

CASE DISMISSED 7/11/13

Final Ruling: The case having previously been dismissed, the Order to Show Cause is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is dismissed as moot, the case having already been dismissed.

4. [13-23803](#)-E-13 MARIA FLORES
TSB-2 Pro Se

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
6-20-13 [[37](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on June 20, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered.

The Motion to Dismiss is granted and the case is dismissed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the

matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,374.00 delinquent in plan payments, which represents multiple months of the \$2,187.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c) (1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's sustaining of the Trustee's Objection to Confirmation on May 21, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c) (1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

5. [13-23304](#)-E-13 TISA KELLEY
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-17-13 [[47](#)]

CASE DISMISSED 7/1/13

Final Ruling: The case having previously been dismissed, the Order to Show Cause is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is dismissed as moot, the case having already been dismissed.

6. [13-23407](#)-E-13 MARK/JENNIFER GALISATUS
TSB-2 Daniel Davis

MOTION TO DISMISS CASE
6-20-13 [[60](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the bankruptcy case shall proceed.

7. [13-24512](#)-E-13 AMOS SNELL MOTION TO DISMISS CASE
TSB-1 Michael Yesk 6-28-13 [[71](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$900.00 delinquent in plan payments, which represents multiple months of the \$450.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following filing a plan on May 29, 2013. A review of the docket shows that Debtor has not yet filed a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Further, the Trustee alleges that the Debtor did not appear at the continued Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Lastly, Trustee argues that the Debtor is not entitled to Chapter 13 relief pursuant to 11 U.S.C. § 109(e). The Debtor appears to be over the unsecured debt limit of \$383,175.00 as the Debtor has listed a total of \$755,947.00 of unsecured debt on Schedule F.

Though dismissing the case, the court has continuing jurisdiction to address the conduct of counsel and creditor parties appearing in this case. The court's jurisdiction over parties concerning their conduct in a bankruptcy case or adversary proceeding is not terminated by the dismissal of the case or adversary proceeding. *Schering Corp. v. Vitarine Pharmaceuticals, Inc.*, 889 F.2d 490, 495-496 (3rd Cir. 1989) ("The analogy of Rule 11 sanctions to contempt proceedings is apt. Both are designed to deter misbehavior before the Court. See Fed. R. Civ. P. 11, advisory committee's note ('Since its original promulgation, Rule 11 has provided for the striking of pleadings and imposition of disciplinary sanctions to check abuses in the signing of pleadings...To hold that a district court has no power to order sanctions after a voluntary dismissal is to emasculate Rule 11 in those cases where wily plaintiffs file baseless complaints, unnecessarily sap the precious resources of their adversaries and the courts, only to insulate themselves from sanctions by promptly filing a notice of dismissal.');

Greenberg v. Sala, 822 F.2d 882, 885 (9th Cir. 1987) ("At the time the district court denied the defendants' motions for Rule 11 sanctions, the case had been dismissed. The dismissal, however, did not deprive the court of jurisdiction to consider the motions. See *Szabo Food Service, Inc. v. Canteen Corp.*, No. 86-3093, slip op. (7th Cir. Jun. 29, 1987) (voluntary dismissal under Rule 42(a)(1)).")

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

IT IS FURTHER ORDERED that the Clerk of the Court shall not close this case until after August 31, 2013, the court having continuing jurisdiction to address the conduct of counsel for creditors and the creditor in this case.

8. [13-23918](#)-E-13 **MICHAEL/ISABELLE KEELING** **MOTION TO DISMISS CASE**
TSB-2 D. Randall Ensminger 6-20-13 [[34](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the bankruptcy case shall proceed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 17, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is that the hearing on the Motion to Dismiss is continued to 3:00 p.m. on September 10, 2013, to be heard in conjunction with a pending motion to confirm a second amended plan filed by the Debtor. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,900.00 delinquent in plan payments, which represents multiple months of the \$2,400.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on May 14, 2013.

A review of the docket shows that Debtor filed a Modified Plan and a Motion to Confirm on July 25, 2013, set to be heard September 10, 2013. The proposed Second Amended Plan provides,

- A. The Plan term is 60 months.
- B. For the first 10 months of the Second Amended Plan the Debtor shall pay a total of \$6,450.00. For the remaining fifth months of the Second Amended Plan the Debtor will make plan payments of \$450.00 a month to the Trustee.

- C. The case having been filed October 19, 2012, the first ten months of payments will be for November 2012 through August 2013.
- D. The following classes of claims are provided for in the proposed Second Amended Plan:
 - 1. Class 2 claim of GMAC Mortgage second by second deed of trust on residence.
 - 2. Class 4 payments to Ocwen Loan Servicing, LLC of \$1,400.00 directly by the Debtor. It is asserted that a loan modification has been entered into and no arrearage exists on this claim.
 - 3. Class 5 priority unsecured claims to the Franchise Tax Board and the Internal Revenue Service (\$11,617.42 total claims).
 - 4. Class 7 general unsecured dividend of 5%.

The declaration (Dckt. 76) in support of the motion to confirm does not provide testimony as to how much in plan payments the Debtor had made as of the date of the declaration. The motion (Dckt. 74) alleges that the Debtor has made "approximately" \$6,000.00 in plan payments as of the July 25, 2013 motion. This would be consistent with the proposed Second Amended Plan requiring the Debtor to have made \$6,450.00 in plan payment through August 2013. This is not consistent with the evidence presented by the Trustee that the Debtor made payments of only \$5,550.00 as of July 3, 2013.

Though the court has some doubts given the Debtor not providing testimony in his declaration as to the actual amounts he has paid into the plan (leaving it merely to be an approximately to be alleged in the motion), it does appear that the Debtor and counsel are moving forward and attempting to confirm a plan.

This is not the first motion to dismiss for the failure to prosecute the Chapter 13 case. Only after the first motion was filed and the court was on the verge of dismissing the case did the Debtor file a First Amended Plan and plead to not have the case dismissed. Civil Minutes, Dckt. 45. Unfortunately the court denied confirmation of that Plan because the Debtor was \$2,400.00 delinquent in plan payments.

It is not appropriate to deny the Chapter 13 Trustee's Motion to Dismiss in light of the multiple defaults and failures of the Debtor in this case. It further appears that this Debtor is motivated to prosecute his case only when facing dismissal.

The court continues the hearing on the Motion to Dismiss to 3:00 p.m. on September 10, 2013. At that time the Debtor can either (1) confirm his Chapter 13 Plan or (2) have the case dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 3:00 p.m. on September 10, 2013, to be heard in conjunction with a pending motion to confirm a second amended plan filed by the Debtor.

10. [12-35521](#)-E-13 CHRISTOPHER DEAN CONTINUED MOTION TO DISMISS
TSB-3 Peter Macaluso CASE
4-15-13 [[80](#)]

CONT. FROM 5-8-13

Local Rule 9014-1(f)(2) Motion - Continued Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 15, 2013. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 19, 2013.

At the hearing, the Debtor advised the court and Trustee that (1) the homeowners association improperly conducted a sale post-petition (without knowledge of the bankruptcy) and (2) the Debtor has a new job. The court continued the hearing to allow time for Debtor to file a new plan. A review of the docket shows that Debtor filed a new plan and a motion to confirm on July 24, 2013. As the Debtor has addressed the Trustee's concern, the Motion is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied.

11. [12-36225-E-13](#) **MAXIMO/MILAGROS SINNUNG** **MOTION TO DISMISS CASE**
TSB-1 **Peter Macaluso** **6-28-13 [97]**

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

12. [13-25226-E-13](#) MARIO VEGA
TSB-4 Tracy Wood

MOTION TO DISMISS CASE
6-28-13 [[42](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,321.80 delinquent in plan payments, which represents multiple months of the \$1,160.90 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

13. [13-22028](#)-E-13 FAITH EVANS MOTION TO DISMISS CASE
TSB-1 Bruce Dwiggins 7-17-13 [[57](#)]

Final Ruling: The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

14. [13-23230](#)-E-13 CHRISTOPHER SWENDSEN ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-14-13 [[59](#)]

CASE DISMISSED 7/1/13

Final Ruling: The case having previously been dismissed, the Order to Show Cause is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is dismissed as moot, the case having already been dismissed.

15. [13-22331](#)-E-13 ERICH/CONNIE PARKS
TSB-2 Al Patrick

MOTION TO DISMISS CASE
6-28-13 [[59](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on June 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on June 18, 2013. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Moreover, Trustee argues that Debtor failed to provide a tax transcript or copy of his/her Federal Income Tax Return for 2012. Filing of the return is required. 11 U.S.C. § 1308. Debtor's failure to file the return is grounds to dismiss the case. 11 U.S.C. § 1307(e).

Lastly, Trustee argues that the Debtors may not be entitled to Chapter 13 relief, because they may be over the unsecured debt limit. Trustee states that according to Schedule F, Debtors list unsecured debts totaling \$101,358.26, but list three debts as "unknown" and indicate only one is disputed - the claim of Alhambra Water, Goodwin Law Corporation and Jane Does 1-9. Trustee states that five unsecured claims were filed by Jane Does for sexual assault and malpractice in the amount of \$500,000.00 each. The unsecured debt limit is \$360,475.00.

DEBTOR'S RESPONSE

Debtors respond, asserting the 2012 tax returns have not been filed. Debtors state that the LLC and Corporation taxes need to be done before the 1040 individual taxes can be completed. Debtors assert that the tax liability owed to California and/or the Internal Revenue Service will be minuscule or less than zero.

Debtors argue that they are not over the allowable debt limit imposed by section 109(e), as the claims the Trustee refers to are unliquidated and not the subject of calculation or easy determination.

Lastly, Debtors assert they have filed an amended plan and set the confirmation hearing for September 10, 2013. A review of the court docket shows that a plan and motion confirming were filed on July 17, 2013.

DISCUSSION

It appears the Debtor has addressed the Trustee's concerns regarding filing a new plan, and explains the failure to produce 2012 tax returns because they have failed to prepare and file the required returns. However, 11 U.S.C. § 1308(a) places an affirmative obligation on Chapter 13 debtors that, if a tax return is required, that he or she "[s]hall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition." The trustee is authorized to continue the First Meeting of Creditors for a reasonable period of time, not to exceed 120 days from the date for the First Meeting of Creditors for a return due prior to the commencement of the bankruptcy case, or for a tax return not delinquent when the case was filed, the later of 120 days after the date of the First Meeting of Creditors or the last date for which the debtor is entitled for an automatic extension, if such request for an extension was timely made by the debtor. For cause shown, the court may extend the time for a further limited period. 11 U.S.C. § 1308(b) (1), (2).

The bankruptcy case was commenced by the Debtors on February 22, 2013. No showing has been made by the Debtors that their tax return for 2012 was not due on April 15, 2013. Further, the Debtors have not provided the court with any evidence of an automatic extension which was timely requested and granted. The Debtors have not sought from the court an extension of time for the filing of the 2012 tax returns. Finally, the Debtors do not assert that no tax return is required for 2012, but merely state that based on "information and belief" they contend that no tax payments will be due. Merely "hoping and contending" that no tax payments will be due does not mean that tax returns do not have to be filed.

The 120 day period for continuing the First Meeting of Creditors expires on August 15, 2013. Not having provided the 2012 tax returns, the Debtors have the Trustee, creditors, and parties in interest flying blind. No return has been filed, which would again cause the proposed plan to be denied. See Civil Minutes from hearing on prior motion to confirm plan, Dckt. 52.

The second issue before the court is whether the Debtors can qualify as Chapter 13 debtors. Pursuant to 11 U.S.C. § 109(e), an individual with regular income that owes, on the date of the filing of the petition, "noncontingent, liquidated, unsecured debts of less than \$383,175" may be a debtor under Chapter 13. The Ninth Circuit has held that a debt is liquidated for the purposes of calculating eligibility for relief under § 109(e) if the amount of the debt is readily determinable. *Slack v. Wilshire Ins. Co. (In re Slack)*, 187 F.3d 1070, 1073 (9th Cir. 1999). In *In re Fostvedt*, the Ninth Circuit Court of Appeals stated that the question of

whether a debt is liquidated "turns on whether it is subject to 'ready determination and precision in computation of the amount due.'" 823 F.2d 305 (9th Cir. 1987) (quoting *Sylvester v. Dow Jones and Co., Inc. (In re Sylvester)*, 19 B.R. 671, 673 (B.A.P. 9th Cir. 1982)). Further, the Ninth Circuit Court of Appeals in *In re Wenberg* affirmed the reasoning in the Bankruptcy Appellate Panel opinion: "The definition of 'ready determination' turns on the distinction between a simple hearing to determine the amount of a certain debt, and an extensive and contested evidentiary hearing in which substantial evidence may be necessary to establish amounts or liability." *In re Wenberg*, 94 B.R. 631 (B.A.P. 9th Cir. 1988).

Here, the five (5) unsecured claims filed by Jane Does 1-5 for sexual assault and malpractice in the amount of \$500,000.00 each appear to be pending in state court, with no judgment to date. None of the creditors have sought relief from the automatic stay to prosecute that state court litigation.

These amounts do not appear to be readily determinable or precise in the amount due. These claims would require more than a "simple hearing" to determine liability and amount of the debt owed, if any. Therefore, the unsecured claims filed by Jane Does 1-5 would not be included in the 11 U.S.C. § 109(e) determination, as they were unliquidated on the date of filing.

The Debtor not having addressed the tax filing requirements, the Motion to Dismiss is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

16. [08-29032](#)-E-13 DOREL/MIHAELA GHERMAN
DPC-1 Mark Wolff

CONTINUED MOTION TO DISMISS
CASE
10-26-12 [[126](#)]

CONT. FROM 6-26-13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 26, 2012. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The court's decision is to deny without prejudice the Motion to Dismiss.

On June 27, 2013 the court continued the hearing to follow the Evidentiary Hearing for the objection to claim of Countrywide Home Lending.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$17,441.95 delinquent in plan payments, which represents multiple months of the \$6,160.85 plan payment. Trustee also asserts that another payment of \$6,160.85 will come due before the hearing and Debtor will need to pay \$23,602.80 in order to bring this plan current. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor responds stating they are not required to make monthly payments in the amount of \$6,160.85 as alleged by the Trustee. Debtors argue that the increased payment amount was a result of a Notice of Mortgage Payment Change filed by Countrywide Home Lending and that they have filed an objection which has been continued several times. Debtors requested that the court continue the matter in order for the court to determine the proper amount they should be paying as a post-petition ongoing monthly payment to the class 1 creditor.

TRUSTEE'S REPLY

The Trustee agreed that the court should continue this motion until the matter of the debtor's Objection to Claim and Notice of Mortgage Payment Change by Countrywide Home Lending, Bank of America, and Bank of NY, (Dckt. 112) has been resolved.

CONTINUANCE

At the December 5, 2012, status conference regarding the objection to claim of The Bank of New York Mellon in the above-captioned proceeding, the court set an evidentiary schedule, with the close of discovery on February 19, 2013 and the Pre-Evidentiary Hearing Conference on March 27, 2013. The objection not having been resolved to date, the court continued this matter in order for the objection to be resolved.

On April 1, 2013, the court set the Evidentiary Hearing for the objection to claim of Countrywide Home Lending to June 12, 2013. Dckt. 157. The court continued the matter to June 26, 2013, in order for the objection to first be resolved. The court's review of the docket indicates that on June 18, 2013 Debtors filed a motion for authorization to enter into loan modification with Countrywide Home Lending. The matter is set for hearing on July 2, 2013.

On July 9, 2013, the court entered Judgment in favor of Debtors and against Countrywide Home Lending, ordering that all amounts constituting the obligation evidenced by Proof of Claim No. 3, including such amounts which could properly be asserted for advances, both pre-petition and post-petition, through and including June 12, 2013, which include without limitation advances for property taxes, are waived and that as of June 12, 2013 the Debtors were current on all payment obligations on the claim and no monetary defaults existed. Dckt. 195.

As Debtors were not required to make monthly payments in the amount of \$6,160.85, as the increased payment amount was a result of a Notice of Mortgage Payment Change filed by Countrywide Home Lending, the Motion to Dismiss on these grounds is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

17. [13-26134](#)-E-13 CHARLES/TOMMI BOWLDEN MOTION TO DISMISS CASE
TSB-1 Peter Macaluso 7-17-13 [[25](#)]

Final Ruling: The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

18. [13-27436](#)-E-13 DAVID CRAFT ORDER TO SHOW CAUSE - FAILURE
C. Anthony Hughes TO PAY FEES
7-5-13 [[23](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on July 1, 2013). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no sanctions are issued pursuant thereto, and the case is dismissed.

19. [11-40638](#)-E-13 HAROLD/JANICE MCELHONE MOTION TO DISMISS CASE
TSB-1 John Tosney 6-28-13 [[22](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on June 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee argues that the Debtors are in material default as they failed to provide for the priority claim of the Franchise Tax Board in the amount of \$319.52.

Debtor opposes the motion on the grounds that a Stipulation and Order Regarding a Minor Modification has been submitted to the Trustee to pay said claim. Debtors state they are current will all plan payments under the terms of their plan.

However, the court has not been presented with a Motion to Modify, a motion to approve stipulation or any evidence that such has been submitted to the Trustee.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on June 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Dismiss is granted and the case is dismissed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee asserts that the Debtor filed an amended plan on April 2, 2013, and has yet to file a motion to confirm the Plan. A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Trustee also argues that the Debtor has failed to file a Motion to Value Collateral of "Specialized Loan Servicing" second deed of trust as listed in Class 2(b) of the plan.

Additionally, the Trustee argues that the Debtors cannot make the plan payments. Trustee states the monthly disposable income totals \$65.00, but proposes payments of \$770.00 per month for 60 months.

Lastly, the Trustee states the plan is insufficient to fund the Class 1 mortgage payment. The Debtor is proposing a plan payment of \$770.00 per month and the Plan proposes to pay the Class 1 mortgage claim in the amount of \$1,369.00, which does not include the Trustee's fee in the amount of 4.3%. The Trustee states that the Debtor filed this case on February 1, 2013, and the Class 1 mortgage has only received two (2) payments, April and May 2013.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

21. [13-25142](#)-E-13 DENNIS SPEARS
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-19-13 [[25](#)]**

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on June 14, 2013). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no sanctions are issued pursuant thereto, and the case is dismissed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on June 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Dismiss is granted and the case is dismissed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$500.00 delinquent in plan payments, which represents multiple months of the \$250.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. *See* Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Additionally, The Trustee objects that the Debtor has utilized the wrong Chapter 13 Plan standard form. While the Debtor filed a Chapter 13 Plan, it is not the standard Chapter 13 Plan required by Local Bankruptcy Rule 3015-1(a). The current form plan approved for use by this court is available on the court's website (www.caeb.uscourts.gov, Form No: EDC.003-080-12) or from the Office of the Clerk. Not using the court-approved form represents a failure to file a plan and is grounds to dismiss the case. 11 U.S.C. § 1307(c)(3).

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors

is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c) (1).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a) (1) (B) (iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e) (2) (A); Fed. R. Bankr. P. 4002(b) (3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c) (1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 25, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,650.00 delinquent in plan payments, which represents multiple months of the \$550.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor responds, stating that he will be filing a Sixth Modified Chapter 13 Plan before the scheduled hearing for the Motion to Dismiss is heard. A review of the docket shows that no modified plan has been filed to date.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

24. [12-25245-E-13](#) BRANDON/LARISA NICHOLS MOTION TO DISMISS CASE
DPC-4 Eric Vandermey 6-25-13 [[51](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on June 25, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The court's decision is to grant the Motion to Dismiss and dismiss the case. No appearance at the July 31, 2013 hearing is required.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$13,849.29 delinquent in plan payments, which represents multiple months of the \$3,417.30 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 17, 2013. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rdid ended on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to continue the hearing on the Motion to Dismiss to 3:00 p.m. on August 20, 2013. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on June 11, 2013.

Debtor responds, asserting that a Motion to Avoid Second Lien and Motion to Confirm were denied for several technical reasons and then re-filed. They were refiled and subsequently denied again. The Debtors state they refiled the Motion to Avoid Second Lien and set it for hearing on August 20, 2013. Debtor states as soon as this motion is granted, they will file a Motion to Confirm. Counsel asserts that it is neither Debtors or counsel's intent to delay the confirmation of their Chapter 13 plan to the extent it prejudices creditors. Debtors assert they remain current on their Chapter 13 plan and have every intention of completing the 60-month plan.

The court has reviewed the Motion to Avoid Second Lien and has concerns relating to these Debtors and the prosecution of their case. The motion requests that the court void and extinguish a second deed of trust which secures a claim of Wells Fargo Bank, N.A. solely because "it is wholly unsecured." The Debtors assert that the claim secured by the first deed of trust against the same property exceeds the value of that property. The motion further alleges that "Debtor believes that Wells Fargo, N.A. holds a wholly unsecured lien and should be extinguished and reconveyed upon

discharge of this case pursuant to 11 U.S.C. §506(a) and 1322(b)(2)."
Motion, Dckt. 126.

This motion to avoid lien raises several issues. First, the court is unsure of what is meant by the Debtors asserting that Wells Fargo Bank, N.A. hold a "wholly unsecured lien." Since liens secured obligations, it appears the Debtors are contending that the Wells Fargo Bank, N.A. obligation is secured by a lien, which lien is then further secured by a second lien.

Second, though the court has read and re-read 11 U.S.C. § 506(a) and § 1322(b)(2), and the discharge provisions, it cannot find a statutory basis for avoiding the second deed of trust of Wells Fargo Bank, N.A. On prior occasions this court has addressed the "lien-stripping" process in a Chapter 13 case. See *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien stripping" in Chapter 13 case), and *Martin v. CitiFinancial Services, Inc. (In re Martin)*, Adv. No. 12-2596, 2013 LEXIS 1622 (Bankr. E.D. CA 2013).

On or before August 13, 2013, in connection with the Motion to Avoid Lien, DCN: YG-005, the Debtors shall file and serve on the Chapter 13 Trustee and U.S. Trustee, a supplemental points and authorities providing the legal basis for the court, pursuant to this motion, avoiding the lien of Wells Fargo Bank, N.A. Further, counsel for the Debtors shall provide the court with copies of orders from bankruptcy courts, and the related ruling or decision stating the legal basis therefore, which avoid a lien prior to the completion of a Chapter 13 Plan pursuant to 11 U.S.C. § 506(a) and § 1322(b)(2). No more than five such orders and ruling are required from counsel.

A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. However, Debtor has offered an explanation for the delay in setting the Plan for confirmation, as the Motion to Avoid Lien has been denied several times and the plan cannot be confirmed without this first being completed.

The court continues this Motion to Dismiss to August 20, 2013, to be heard with the Motion to Avoid Lien.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 3:00 p.m. on August 20, 2013.

IT IS FURTHER ORDERED that on or before August 13, 2013, for the Motion to Avoid Lien, DCN: YG-005, the Debtors shall file and serve on the Chapter 13 Trustee and U.S. Trustee, a supplemental points and authorities providing the legal basis for the court, pursuant to this motion, avoiding the lien of Wells Fargo Bank, N.A. Further, counsel for the Debtors shall provide the court with copies of orders from bankruptcy courts, and the related ruling or decision stating the legal basis therefore, which avoid a lien prior to the completion of a Chapter 13 Plan pursuant to 11 U.S.C. § 506(a) and § 1322(b)(2). No more than five such orders and ruling are required from counsel.

26. [11-40549](#)-E-13 DAVID/ALISON WISTROM
TSB-1 Eric Schwab

CONTINUED MOTION TO DISMISS
CASE
4-8-13 [[32](#)]

CONT. FROM 5-8-13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on April 8, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to continue the hearing on the Motion to Dismiss to xxxx. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks to dismiss the case on the basis that the Debtor is in material default under the terms of the confirmed Plan, the Plan now requiring 113 months to complete. This is in excess of the 60 month statutory maximum imposed by 11 U.S.C. §1322(d). The default was created by priority claims as filed exceeded the amount scheduled by \$127,460.03.

Debtor opposes the motion, asserting that they are in the appeals process with the Tax Court. Debtors state they anticipate that, once their audit case is completed, their current plan will be feasible and that if

additional liability remains after the audit case is completed, they will modify their plan.

Debtors are performing their Chapter 13 Plan in this case, which may or may not be sufficient. The Plan requires a significant monthly payment to fund substantial payments to the taxing agencies.

The court notes that on July 16, 2013, Dckt. 47, the court granted the Internal Revenue Service relief from the automatic stay to continue litigation in the Tax Court, the IRS contending that it and Debtors had reached a settlement (in reality, the Internal Revenue Service is accepting the Debtors' stated position on the taxes) regarding the proposed deficiency for tax year 2008. However, the court has not yet approved a compromise or settlement nor has the IRS amended its proof of claim to date. Therefore, it appears the Debtors still may be in material default under the terms of the confirmed Plan.

The court continues the Motion to Dismiss to xxxx, to allow the parties time to implement the settlement agreement.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to xxxx.

27. [11-49750-E-13](#) JUDITH ROTH
TSB-1 Michael O'Dowd Hayes

MOTION TO DISMISS CASE
6-28-13 [[23](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to continue the hearing on the Motion to Dismiss to 10:00 a.m. on September 4, 2013. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee argues that the Debtor's proposed plan will complete in 74 months as opposed to the 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The Trustee argues that the debtor is in material default of the terms of the plan.

Debtor responds, arguing that Debtor did not include student loan debt that she co-signed for her niece because she considered the obligation to be her nieces's obligation and only the obligation of her niece if she defaulted. However, Wells Fargo filed a claim for \$22,424.90 for this obligation, which has resulted in this motion to dismiss.

Debtor asserts they will be objecting to the Wells Fargo claim and asking for a determination that they will not be paid a dividend from her monthly payment, calendared for August 20, 2013. Debtor states if the determination is made that Wells Fargo has to be provided for in Debtor's plan, she will file a modified plan in two weeks.

A review of the docket shows that Debtor filed an Objection to Claim of Wells Fargo Bank, N.A. on July 23, 2013, set for hearing on August 20, 2013.

The court continues the hearing on the Motion to Dismiss to 10:00 a.m. on September 4, 2013, to be heard with the Objection to Claim filed by Debtor.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on September 4, 2013.

28. [13-26252](#)-E-13 JOHN THOMPSON
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-10-13 [[19](#)]**

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on June 5, 2013). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no sanctions are issued pursuant thereto, and the case is dismissed.

29. [13-26252](#)-E-13 JOHN THOMPSON
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-11-13 [[25](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on July 5, 2013). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no sanctions are issued pursuant thereto, and the case is dismissed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on June 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered.

The Motion to Dismiss is granted and the case is dismissed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$100.00 delinquent in plan payments, which represents one month of the plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. *See* Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Trustee filed a Motion to Dismiss based on the Debtor's failure to file the Certificate of Credit Counseling. Federal Rule of Bankruptcy Procedure 1007(c) requires certain documents be filed with the Court the date of filing of the case and this includes the certificate.

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

31.	<u>11-39853</u> -E-13 ROBERT/DAWN CARPENTER TSB-1 Mark Briden	CONTINUED MOTION TO DISMISS CASE 4-5-13 [60]
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CONT. FROM 5-8-13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Service and Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on April 5, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtors filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the plan will complete in 123 months instead of the 60 months proposed. Trustee states Debtors scheduled mortgage arrears as \$20,000 while Creditor filed proof of claim number 14 asserting arrears of \$59,733.40.

Second, Trustee states Debtors were provided with a notice of filed claims on March 12, 2012 indicating that a motion to modify is required.

Debtors' Opposition

Debtors oppose the motion to dismiss and state that under the confirmed plan Debtors are making monthly payments of \$2,650 for one month and \$2,690 for 59 months. Debtors state that as of March 25, 2013 they have paid \$51,070 into the plan and that payments include mortgage payment to Nationstar Mortgage and will cure arrears within the 60-month plan.

Debtors state that in April 2013 they applied for a loan modification with Nationstar through the Making Home Affordable program.

Debtors propose to continue payments of \$2,690 while the loan modification is being processed. Debtors state that if the modification is granted the pre-petition arrears would normally be included in the loan modification. Debtors state that if the modification is denied they will file a modified plan.

Analysis

The court's review of the docket indicates that Debtors have not filed a motion to modify, nor have Debtors filed a motion to approve loan modification. Debtors propose to file a modified plan only if the loan modification is successful, but have not provided a time line for when Debtors will know whether Nationstar has approved the loan modification.

Debtors provide Exhibit A in support of their position. Exhibit A is a letter from Nationstar to Debtors providing information as to documents that must be submitted by early May to allow Debtors to be considered for a loan modification. Technically Debtors have not provided the court with admissible evidence since Debtors failed to file a declaration introducing Exhibit A. The court waives this defect.

CONTINUANCE

The court continued the hearing on motion to dismiss to allow the Debtors to proceed with the loan modification process. The court indicated that Debtors will need to file a motion to approve loan modification and motion to modify the Plan after it is determined whether Debtors qualify for a loan modification.

A review of the docket shows that Debtor has not filed a motion to approve loan modification or any documents regarding the process. Debtor has not filed a response or evidence regarding the progress of the proposed loan modification. As such, it appears that the current plan will complete in 123 months instead of the 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

32. [13-26460](#)-E-13 MICHAEL/KAREN GAUL
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-13-13 [[28](#)]**

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$45.00 due on June 10, 2013). The court docket reflects that on June 21, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on July 3, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and the bankruptcy case is dismissed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee argues that the Debtor did not commence making plan payments and is delinquent in plan payments. The Debtor listed the monthly plan payment as "max" and has not made any plan payments to date, the case having been filed May 9, 2013. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Trustee also asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Also, the Trustee argues that the Debtor has failed to provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. §521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3).

DEBTOR'S RESPONSE

Debtors state they are in pro-per and realize the need to seek an attorney. Debtors state they only have two creditors, one of which they assert does not have a valid claim of debt. Debtors seek to postpone the hearing to a later date.

DISCUSSION

The Debtors commenced the present case on May 9, 2013. As argued by the Trustee, the Chapter 13 Plan form is incomplete and unconfirmable. There are no claims to be paid under the proposed Chapter 13 Plan, with all class and claim fields being completed "n/a." Chapter 13 Plan, Dckt. 24. In substance, no proposed Chapter 13 Plan has been filed in this case, but a mere incomplete form which merely poses as a proposed plan.

The Debtors' opposition is that they have only one (unidentified) creditor. They contend that the only other creditor they have is not owed any amounts based upon "fraudulent documents." Opposition, Dckt. 39. The request for further time appears to be premised on the Debtors now realizing that they need to retain counsel to represent them in this Chapter 13 case. FN.1.

FN.1. On Schedule D the Debtors state under penalty of perjury that they have no creditors holding secured claims. On Schedule D the Debtors state that they have no creditors holding priority general unsecured claims. On Schedule F the Debtors state under penalty of perjury that they have a \$500.00 unliquidated claim owing to "Credit Bureau Asso." and a \$174,000.00 unliquidated and disputed claim owing to "Chase Mail Code: OH-7126." Schedules, Dckt. 27. On Schedule I the Debtors state under penalty of perjury that their combined monthly income is \$536.30. *Id.* However, their monthly expenses are (\$1,828.74), which include a monthly payment of (\$1,214.04) for home mortgage, taxes, and insurance for which there is no creditor listed with a secured claim on Schedule D. Schedule J, *Id.*

This is not the Debtors first bankruptcy case which they have chosen to prosecute in pro se. On November 1, 2012, the Debtors commenced a voluntary Chapter 7 case in pro se. Bankr. E.D. Cal. 12-39379. That Chapter 7 case was dismissed on February 22, 2013. Order dismissing, 12-39379 Dckt. 34. The grounds for the dismissal was the failure of the Debtors to attend the First Meeting of Creditors. Motion to Dismiss, 12-39379 Dckt. 21.

In the prior bankruptcy case a creditor also sought relief from the stay. In opposing that motion, the Debtors requested additional time for opposition be granted "to allow them to confer with counsel." Motion to Enlarge Time, 12-39379 Dckt. 33.

It has now been almost 90 days since this case was commenced for the Debtors to seek and obtain counsel. With respect to bankruptcy proceedings, the Debtors have been aware of their need for counsel, and have been seeking the assistance of counsel from at least the February 21, 2013 request for additional time in the prior case. The at least 180 days in which the Debtors have realized and been seeking the assistance of counsel is more than sufficient to obtain such services.

While pleading as pro se's who should be afforded additional time, it appears that the Debtors have been granted more than sufficient time to obtain the assistance of counsel in good faith. No further time is warranted in this case.

Cause exists to dismiss this bankruptcy case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the bankruptcy case is dismissed.

34. [13-21862-E-13](#) **DANIEL CHENG** **MOTION TO DISMISS CASE**
TSB-2 **Peter Macaluso** **6-20-13 [[69](#)]**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 20, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,959.00.00 delinquent in plan payments, which represents multiple months of the \$2,937.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on May 14, 2013.

Debtors respond, asserting that he is now current with plan payments and has filed and set for confirmation an Amended Plan to be heard on August 20, 2013. However, no evidence is presented that the Debtor is current on

plan payments and no allegation is made in the opposition that under the amended plan the Debtor is current on the payments made for which the Trustee has presented evidence.

A review of the docket shows that Debtor filed a Motion to Confirm Amended Plan on July 8, 2013, set for hearing on August 20, 2013.

While the Debtor may have addressed the Trustee's concern with respect to not diligently prosecuting the Chapter 13 case, he has not addressed the monetary defaults.

Grounds exist to dismiss the case, and the Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the bankruptcy case is dismissed.

35. [13-26966](#)-E-13 NORA MILLER-LA CROIX
Mikalah Liviakis

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-26-13 [[17](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on June 21, 2013). The court docket reflects that on July 10, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 17, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,350.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee asserts that the Debtor withdrew his Motion to Confirm and has failed to file an amended plan and set it for confirmation. A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court,

and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

37. [12-36378](#)-E-13 **MARILYN/JOSHUA JOHNSON** **MOTION TO DISMISS CASE**
TSB-3 **Peter Macaluso** **7-17-13 [[122](#)]**

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 17, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,450.00 delinquent in plan payments, which represents one month of the \$1,450.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on May 14, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

38. [12-34385-E-13](#) **SAMUEL/TREBERLYN MOREAU** **MOTION TO DISMISS CASE**
TSB-3 **D. Randall Ensminger** **7-17-13 [[105](#)]**

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 17, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on June 11, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation.

This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c) (1).

This bankruptcy case was filed on August 3, 2012. Objections to confirmation of the first plan filed in this case were made based on the debtors not (1) having filed pre-petition tax returns, (2) not providing pay advices, (3) having filed a motion to value secured claim, (4) identifying a creditor to receive a Class 4 payment, (5) attaching additional plan provisions, and (6) providing to cure the arrearage on a secured claim or to surrender the property which secures the claim. Civil Minutes, Dckts. 38, 40.

The First Amended Plan was denied confirmation because: (1) the Debtors had failed to commence making any plan payments, (2) the amount of attorneys' fees to be paid under the plan was not clearly stated, (3) additional provisions to the plan were not set out in an attachment under Section VI of the Plan, (4) the plan payments of \$100.00 for the first two months did not properly fund the plan, rendering it not feasible, (5) the Plan failed the Chapter 7 liquidation test, (6) the Plan fails to provide information in the Schedules concerning a \$56,000.00 secured claim of Wells Fargo Bank, N.A., and (7) the Plan fails to cure the arrearage of a Class 1 secured claim. Civil Minutes, Dckt. 51.

The Second Amended Plan was defined confirmation because: (1) the Plan inaccurately states the amount of attorneys' fees to be paid counsel for the Debtors, (2) the plan payments exceed the Debtors' monthly projected disposable income, (3) the plan fails the Chapter 7 liquidation test, (4) the Debtors are not proceeding in good faith and have failed to provide information concerning real property they own in Jacksonville, Florida, (5) the Debtors continue to fail to provide information concerning a \$56,000.00 secured claim owed to Wells Fargo Bank, N.A., (6) the Plan does not provide to cure the arrearage on a claim secured by the Debtor's residence, which is incorrectly listed as a Class 4 secured claim, and (7) the Debtors have failed to list on Schedule B an asset they seek to claim as exempt on Schedule C. Civil Minutes, Dckt. 83.

The Third Amended Plan was denied confirmation of the Third Amended Plan because: (1) the Debtors were delinquent in the plan payments, (2) the plan failed to provide for Wells Fargo Bank, N.A. and JPMorgan Chase Bank, N.A. as a Class 1, 2, 3, or 4 claim, (3) the Debtors inconsistently state their income, having reduced the amount stated on Schedule I by \$849.99 is seeking to confirm the Third Amended Plan, and (4) the Debtors have further failed to provide the Trustee with information concerning the Jacksonville, Florida Properties. Civil Minutes, Dckt. 102.

After the June 17, 2013 denial of confirmation, no further action has been taken by the Debtors in prosecution of this case. The Debtors have now spent one-year ensconced in the protective cocoon of bankruptcy. During this time they have proposed non-productive plans and repeated failed to disclose information concerning property of the estate from the Trustee and creditors. More than sufficient time has been provided in this case for debtors attempting to prosecute the case and confirm a plan in good faith. These Debtors have chosen not to do so, apparently attempting to re-write the Bankruptcy Code to fit their desired economic outcome and limited

willingness to disclose information to the Trustee, creditors, other parties in interest, and the court.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

39. [13-26388](#)-E-13 VIVIAN HOCKADAY
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-15-13 [[17](#)]**

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on July 8, 2013). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no sanctions are issued pursuant thereto, and the case is dismissed.

40. [13-26388](#)-E-13 VIVIAN HOCKADAY
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-12-13 [[15](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on June 7, 2013). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no sanctions are issued pursuant thereto, and the case is dismissed.

41. [09-44395](#)-E-13 JOHN/THERESA RUTHERFORD
TSB-1 John Tosney

MOTION TO DISMISS CASE
6-28-13 [[106](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on June 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$40,820.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c) (1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

42.	<u>13-22995</u> -E-13 DANIEL/MARIA BASHAM TSB-2 Justin Kuney	MOTION TO DISMISS CASE 7-17-13 [<u>51</u>]
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Final Ruling: The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,800.00 delinquent in plan payments, which represents one month of the \$2,800.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the Trustee's objection to confirmation, which was sustained on May 14, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan.

Debtor's counsel responded to the motion, stating that Debtor is now current and plans to have a new plan filed and set for hearing on or before the hearing date in this matter. However, Debtor has not provided evidence to the court that he is in fact current on plan payments. Furthermore, a review of the docket shows that Debtor has not yet filed a new plan to date.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.